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C O N F I D E N T I A L HARARE 002185

SIPDIS

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E.O. 12958: DECL: 11/03/2013

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SUBJECT: ELECTION PETITION HEARINGS UNDERWAY

REF: HARARE 2123

Classified By: Political Officer Win Dayton under Section 1.5(b)(d)

1. (U) Presided over by High Court Justice Hlatshwayo, hearings on the MDC's petition seeking invalidation of Zimbabwe's 2002 election results commenced November 3. Attorneys for the MDC spent the day reviewing arguments advanced in the party's petition (e-mailed to AF/S), interrupted occasionally with questions by a soft-spoken Justice Hlatshwayo. The day's first order of business was a shifting -- on petitioner's motion -- of the court venue to a larger courtroom within the High Court to accommodate the modest crowd of several dozen spectators, which included foreign diplomats.

2. (C) Last week's naming of Hlatshwayo as presiding justice was an unwelcome development for the MDC. A relative newcomer to the bench, Hlatshwayo already has developed a pro-government track record in politically sensitive cases, including a recent contest over elections in Chegutu, in which he upheld the election's result despite the violent obstruction of MDC members from registering their candidacies. A former university lecturer known for his outspokenly socialist views, Hlatshwayo was seen as a close protege of Information Minister Jonathan Moyo when they served on a constitutional commission together in the run-up to the 2000 constitutional referendum. He seized a farm in connection with the government's land reform program and is respondent in a legal challenge being brought by the aggrieved farmer.

3. (C) MDC Secretary for Legal Affairs David Coltart told poloff that the MDC had decided against seeking recusal of Justice Hlatshwayo (contrary to reports in the government-controlled press). Such a motion would have been difficult to win and would have served only to delay commencement of an examination of the case's merits. Hlatshwayo's assignment to the case only served to underscore the inevitability of the case's outcome, but the MDC was pleased to have proceedings underway in any event. Coltart said the presence of U.S. Federal District Judge Davis (here on behalf of the American Bar Association) and another Kenyan jurist as international observers was critical in keeping Hlatshwayo "honest" -- at least on technical motions such as the venue change.

4. (C) COMMENT: Today's edition of the government-controlled Herald carried nothing on the hearing, underscoring the government's interest in minimizing coverage of the case at home even as the MDC seeks to maximize coverage abroad. Although prospects for an overturning of the election result seem unlikely, timetable for the case's progress remains an uncertain variable. As reported reftel, constitutional arguments are likely to be wrapped up within the next week or so. The High Court can decide on them itself or refer them to the Supreme Court for judgment -- either step could take months. Assuming a finding for the government in this first phase, the case would then proceed to a second phase that would address evidence of specific incidents of intimidation and misconduct -- a spectacle the government would prefer to defer until next year, if ever.

SULLIVAN